

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201206026

November 15, 2011

Uniform Issue List: 408.03-00

SE:T:EP:RA:T2

Legend:

Taxpayer A ***

Financial
Institution A ***

Financial
Institution B ***

Financial
Institution C ***

IRA X ***

Financial
Advisor G ***

Individual H ***

Amount 1 ***

Account Y ***

Date 1 ***

Date 2 ***

Date 3 ***

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Dear ***:

This letter is in response to your request dated June 7, 2010, submitted on your behalf by your authorized representative, as supplemented by written correspondence dated February 1, 2011, August 30, 2011, and October 3, 2011, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, years old, represents that he received a distribution from IRA X at Financial Institution A on Date 1 totaling Amount 1 with the intent to rollover Amount 1 into a newly established IRA at Financial Institution B and that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error made by Financial Institution C, through its registered representative Financial Advisor G. Taxpayer A also represents that Amount 1 has not been used for any other purpose.

Taxpayer A represents that on Date 1, he received a distribution of Amount 1 from IRA X in the form of a check. Taxpayer A asserts that he held onto the check and did not redeem it until Date 2. On Date 2, Taxpayer A provided Financial Advisor G, an employee of Financial Institution C, with information showing that Amount 1 was distributed from IRA X and requested that Financial Advisor G rollover Amount 1 into another IRA at Financial Institution B. According to Taxpayer A, Financial Advisor G failed to realize that IRA X was an IRA account and instead of establishing another IRA, gave Taxpayer A an application for a non-qualified account. Taxpayer A asserts that Financial Advisor G erroneously opened a non-qualified account, Account Y, and, on Date 2, transferred Amount 1 into Account Y, when Taxpayer A had intended to open a qualified IRA rollover account. Taxpayer A represents that he believed that Amount 1 was successfully rolled over into an IRA.

Taxpayer A was unaware of the error until Date 3, when he received a tax assessment notice from the IRS. Taxpayer A then contacted Financial Institution C regarding Account Y. Taxpayer A submitted a sworn affidavit from Individual H, the Executive Vice-President of Financial Institution C, stating: (1) Financial Institution C received qualified funds from Financial Institution A on behalf of Taxpayer A prior to the expiration of the 60-day rollover period; (2) Taxpayer A followed all procedures indicated as required by Financial Institution C for deposits of such funds into what Taxpayer A believed to be an IRA within the 60-day roll-over period (including giving instructions to deposit the funds into an IRA); and (3) solely due to an error on the part of Financial Institution C, through its registered representative, Amount 1 was not deposited into an IRA within the 60-day roll-over period.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1 from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to

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section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A, including a sworn affidavit by Individual H stating that the failure of Amount 1 to be rolled over to an IRA within the 60-day rollover period was due solely to error by Financial Institution C, through its registered representative, is consistent with his assertion that his failure to accomplish a timely rollover was caused by an error made by Financial Advisor G, which resulted in Amount 1 being deposited into Account Y, a non-IRA account.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, contact *** at () . Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

Donzell Littlejohn, Manager,
Employee Plans Technical Group 2

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Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: ***
